



GEORGIA GOVERNMENT TRANSPARENCY & CAMPAIGN FINANCE COMMISSION

Advisory Opinion

No. 2020-02

In response to an advisory opinion request on April 6, 2020, from Sen. Horacena Tate, the Georgia Government Transparency and Campaign Finance Commission advises that if the General Assembly has “suspended” its session and has not officially adjourned *Sine Die* or by concurrent resolution of the House of Representatives and the Senate, nor has the Governor issued an executive order adjourning both houses for a period of 10 days, the General Assembly is still legally in session and has not adjourned. The Commission further advises that if the General Assembly has not officially adjourned, then members of the Georgia General Assembly, including other public officers subject to O.C.G.A. § 21-5-35(a), are not permitted to accept campaign contributions or pledges of campaign contributions while the General Assembly is officially in session. The Commission also further advises that members of the General Assembly, including other public officers subject to O.C.G.A. § 21-5-35(a), are permitted to accept campaign contributions and pledges of campaign contributions once the General Assembly has adjourned *Sine Die* or as further provided by the Constitution of the State of Georgia. *See* Ga. Const. Art. III, Section IV, Para. I.

Questions Presented in Request for Advisory Opinion 2020-02

- (1) “Can a member of the Georgia General Assembly or that member’s campaign committee seek or accept a contribution or a pledge of a contribution to the member or the member’s campaign committee while a legislative session is in suspension?”

Factual Background

In a letter dated April 6, 2020, Sen. Horacena Tate (Sen. Tate) seeks guidance as to whether members of the Georgia General Assembly may, in compliance with the Georgia Government Transparency & Campaign Finance Act (Act), legally accept contributions or pledges of contributions to their campaign and/or their campaign committees during the suspension of the

General Assembly's 2020 legislative session, which occurred on March 12, 2020 pursuant to House Resolution 1473.¹

Discussion & Legal Analysis

Under the Constitution for the State of Georgia, the General Assembly's regular session must commence on the second Monday in January of each year and may continue thereafter for a period not to exceed 40 legislative days. Ga. Const. Art. III, Section IV, Para. I. If the General Assembly has "suspended" its session and has not officially adjourned *Sine Die* or by concurrent resolution of the House of Representatives and the Senate, nor has the Governor issued an executive order adjourning both houses for a period of 10 days, the General Assembly is still legally in session and has not adjourned. While some may view a suspension of the legislative session as tantamount to adjournment, the constitution has no such provision for "suspension" of the legislative session as the procedure for adjournments is clearly set forth by the constitution as follows -

(a) The Senate and House of Representatives shall organize each odd-numbered year and shall be a different General Assembly for each two-year period. The General Assembly shall meet in regular session on the second Monday in January of each year, or otherwise as provided by law, and may continue in session for a period of no longer than 40 days in the aggregate each year. By concurrent resolution, the General Assembly may adjourn any regular session to such later date as it may fix for reconvening. Separate periods of adjournment may be fixed by one or more such concurrent resolutions.

(b) Neither house shall adjourn during a regular session for more than three days or meet in any place other than the state capitol without the consent of the other. Following the fifth day of a special session, either house may adjourn not more than twice for a period not to exceed seven days for each such adjournment. In the event either house, after the thirtieth day of any session, adopts a resolution to adjourn for a specified period of time and such resolution and any amendments thereto are not adopted by both houses by the end of the legislative day on which adjournment was called for in such resolution, the Governor may adjourn both houses for a period of time not to exceed ten days.

Ga. Const. Art. III, Section IV, Para. I.

When the General Assembly adopted the Ethics in Government Act (the precursor to the current Georgia Government Transparency and Campaign Finance Act) (Act), the General Assembly instituted a number of prohibitions upon the ability of both elected public officers and candidates for elected public office to accept and expend campaign funds during their campaigns for elected office (e.g., maximum campaign contribution limits, spending restrictions, accounting requirements, etc.). Chief among these restrictions was a prohibition against, *inter alia*, members

¹ The General Assembly suspended its legislative session on March 12, 2020 and reconvened on March 16, 2020 in a special session to concur with Governor Brian P. Kemp's Declaration of a Public Health Emergency which was issued on March 14, 2020.

of the General Assembly which forbid them from accepting contributions to their campaigns for public office while the General Assembly was officially in session. The original Act held, in pertinent part, that “No member of the General Assembly or that member's campaign committee [...] shall accept a contribution during a legislative session.” O.C.G.A. § 21-5-35(a) (1995).

Over time, members of the General Assembly began testing the limits of the Act’s prohibition against the acceptance of campaign contributions during an official session of the General Assembly. During this time, one of the more common “loopholes” employed by elected public officers was to arrange for “pledges” and “goals” from supporters during the General Assembly’s official legislative session with actual contributions remaining unpaid until the General Assembly adjourned *Sine Die* upon the conclusion of the 40th legislative day. In response, the State Ethics Commission (the precursor to the current Georgia Government Transparency and Campaign Finance Commission) (“Commission”), sought to enforce the Act’s prohibition against the acceptance of contributions by means of the fictitious “pledges” and “goals” during a legislative session on the grounds that said goals and pledges were contributions under the Act as they were “...[some]thing of value conveyed or transferred for the purpose of influencing the nomination for election or election of any person for office....” O.C.G.A. § 21-5-3(6).² In response to the Commission’s new enforcement priority, a member of the General Assembly sought to strengthen their argument in opposition by seeking an unofficial opinion from the Georgia Department of Law in an attempt to confirm that the Act’s prohibition was silent as to the acceptance of pledges and goals. The Department of Law, while although agreeing with the requestor that the Act did not explicitly prohibit the acceptance of “pledges” and “goals,” advised against the acceptance of the same when they opined, *inter alia*, that:

It is clear that **the General Assembly intended O.C.G.A. § 21-5-35 to prevent even the appearance of impropriety by its members** or certain state officers in accepting contributions during a period where legislation is pending and there could be a perception that any legislative action could be influenced by the giving of a campaign contribution. This strong statement by the General Assembly is consistent with its desire that public officials not be influenced in the performance of their duties by improper "political contributions.”

² O.C.G.A. § 21-5-3(6) (1995) held that a “Contribution means a gift, subscription, membership, loan, forgiveness of debt, advance or deposit of money or anything of value conveyed or transferred for the purpose of influencing the nomination for election or election of any person for office, bringing about the recall of a public officer holding elective office or opposing the recall of a public officer holding elective office, or the influencing of voter approval or rejection of a proposed constitutional amendment, a state-wide referendum, or a proposed question which is to appear on the ballot in any county or municipal election. The term specifically shall not include the value of personal services performed by persons who serve without compensation from any sources and on a voluntary basis. The term "contribution" shall include other forms of payment made to candidates for office or who hold office when such fees and compensation made can be reasonably construed as a campaign contribution designed to encourage or influence a candidate or public officer holding elective office. The term "contribution" shall also encompass transactions wherein a qualifying fee required of the candidate is furnished or paid by anyone other than the candidate. (Internal quotations omitted).

1995 Op. Att’y Gen. No. U95-27 (emphasis added).

The Department of Law also opined that the prohibition contained in O.C.G.A. § 21-5-35 most closely resembled the state’s criminal bribery statute in that the Act’s prohibition sought to prevent members of the General Assembly, and other public officers subject to O.C.G.A. § 21-5-35(a), from accepting things of value in an effort to, arguably, influence their official public duties. *Id.* See O.C.G.A. § 16-10-2 (bribery prohibited). See also, Teper v. Miller, 82 F.3d 989 (11th Cir. 1996) (holding that the Act’s universal prohibition on public officers accepting campaign contributions during the General Assembly’s legislative session was superseded by the Federal Elections Campaign Act as applied to public officers seeking federal office). See generally, State v. Agan, 259 Ga. 541, (1989), cert. denied, 494 U.S. 1057 (1990) (Differentiation between permissible political influence and prohibited bribery).

As presently drafted, the Act holds that “No member of the General Assembly or that member’s campaign committee [...] **shall seek or accept a contribution or a pledge of a contribution to the member**, the member’s campaign committee, [...] during a legislative session.” O.C.G.A. § 21-5-35(a) (2019) (emphasis added).³ The Act also presently defines a “contribution” as, *inter alia*, “[A] gift, subscription, membership, loan, forgiveness of debt, advance or deposit of money or anything of value **conveyed or transferred** for the purpose of influencing the nomination for election or election of any person for office[...].” O.C.G.A. § 21-5-3(7) (emphasis added). Whereas the Act currently defines an “expenditure” as, *inter alia*, “[A] purchase, payment, distribution, loan, advance, deposit, or any transfer of money or anything of value **made for the purpose** of influencing the nomination for election or election of any person[...].” O.C.G.A. § 21-5-3(12) (emphasis added).

In the question presented by Sen. Tate, the Commission is essentially asked to consider whether a member of the General Assembly, or a member of their campaign staff, may legally accept contributions or pledges of contributions to their campaign and/or their campaign committees during the suspension of the General Assembly’s 2020 legislative session. In any subsequent analysis, the Commission must first note that the Act prohibits members of the General Assembly and certain public officers subject to O.C.G.A. § 21-5-35 from accepting contributions while the General Assembly is in session, but it does not prohibit the same public officers from spending campaign funds that are presently in their or their campaign’s possession. Moreover, the Commission notes that the relevant prohibition on accepting contributions specifically states that a member of the General Assembly “**shall [not] seek or accept** a contribution or a pledge of a contribution to the member or the member’s campaign committee.” O.C.G.G.A. § 21-5-35 (emphasis added). In the hypothetical presented, the member of the General Assembly would be seeking either a campaign contribution or a pledge of a campaign contribution while the General Assembly is officially in session but suspending its legislative calendar. In that light, the

³ The Act’s prohibition on members of the General Assembly was amended to explicitly prohibit the acceptance of pledges of a contribution while the General Assembly is still officially in session.

Commission advises that members of the Georgia General Assembly, including other public officers subject to O.C.G.A. § 21-5-35(a), are not permitted to accept campaign contributions or pledges of campaign contributions while the General Assembly is officially in session. The Commission also further advises that members of the General Assembly, including other public officers subject to O.C.G.A. § 21-5-35(a), are permitted to accept campaign contributions once the General Assembly has adjourned *Sine Die* or as further provided by the Constitution of the State of Georgia. *See* Ga. Const. Art. III, Section IV, Para. I.

Conclusion

For the reasons described above, the Commission advises that if the General Assembly has “suspended” its session and has not officially adjourned *Sine Die* or by concurrent resolution of the House of Representatives and the Senate, nor has the Governor issued an executive order adjourning both houses for a period of 10 days, the General Assembly is still legally in session and has not adjourned. The Commission further advises that if the General Assembly has not officially adjourned, then members of the Georgia General Assembly, including other public officers subject to O.C.G.A. § 21-5-35(a), are not permitted to accept campaign contributions or pledges of campaign contributions while the General Assembly is officially in session. The Commission also further advises that members of the General Assembly, including other public officers subject to O.C.G.A. § 21-5-35(a), are permitted to accept campaign contributions and pledges of campaign contributions once the General Assembly has adjourned *Sine Die* or as further provided by the Constitution of the State of Georgia. *See* Ga. Const. Art. III, Section IV, Para. I.

This Advisory Opinion concerns the application of the Georgia Government Transparency and Campaign Finance Act, or regulations prescribed by the Georgia Government Transparency and Campaign Finance Commission, to the specific facts, transaction or activity set forth in Request for Advisory Opinion 2020-02.

Advisory Opinion 2020-02 is hereby adopted by the Commission in conformity with O.C.G.A. § 21-5-6(13) on April XX, 2020.

Jake Evans
Chair of the Commission

AO 2020-02 prepared by Robert S. Lane.
April 8, 2020.